

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERNEST ROGER FOUNTAIN JR.,

Petitioner,

v.

BRANDON PRICE,

Respondent.

No. 1:23-cv-00708-KES-SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE CERTIFICATE OF APPEALABILITY

(ECF No. 6)

Ernest Roger Fountain Jr. (“Petitioner”) is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 25, 2023, the Magistrate Judge issued findings and recommendations recommending that the petition for writ of habeas corpus be dismissed for failure to prosecute and failure to obey a court order. (ECF No. 6.) The findings and recommendations were served on Petitioner and contained notice that any objections were to be filed within fourteen (14) days of the date of service of the findings and recommendations.¹ (*Id.* at 3.) To date, no objections have been filed, and the time for doing so has passed.

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¹ Absent notice of a change of address, “service of documents at the prior address of the . . . pro se party shall be fully effective.” Local Rule 182(f).

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
2 *de novo* review of the case. Having carefully reviewed the entire file, the Court holds the findings
3 and recommendations to be supported by the record and proper analysis.

4 Having found that Petitioner is not entitled to habeas relief, the Court now turns to
5 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
6 has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is
7 allowed only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28
8 U.S.C. § 2253. The Court should issue a certificate of appealability if "reasonable jurists could
9 debate whether (or, for that matter, agree that) the petition should have been resolved in a
10 different manner or that the issues presented were 'adequate to deserve encouragement to proceed
11 further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
12 880, 893 & n.4 (1983)). In the present case, the Court finds that reasonable jurists would not find
13 the Court's determination that the petition should be dismissed debatable or wrong, or that
14 Petitioner should be allowed to proceed further. Therefore, the Court declines to issue a
15 certificate of appealability.

16 Accordingly,

- 17 1. The findings and recommendations issued on September 25, 2023, (ECF No. 6), are
18 adopted in full;
 - 19 2. The petition for writ of habeas corpus is dismissed without prejudice;
 - 20 3. The Clerk of Court is directed to close the case; and
 - 21 4. The Court declines to issue a certificate of appealability.
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24 IT IS SO ORDERED.

25 Dated: March 20, 2024

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28 UNITED STATES DISTRICT JUDGE